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AN ACT

RELATING TO MUNICIPALITIES; AUTHORIZING CERTAIN MUNICIPALITIES TO
IMPOSE A HOSPITALITY FEE ON TOURIST ACCOMMODATIONS FOR CONVENTION
CENTER IMPROVEMENTS AND TOURISM MARKETING AND PROMOTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Hospitality Fee Act".

Section 2. DEFINITIONS.--As used in the Hospitality Fee Act:

A. "gross rent" means the total amount of rent paid for tourist accommodations, not including the state and local option gross receipts taxes paid on the rent receipts;

B. "municipality" means a municipality located in a class A county with a population greater than two hundred fifty thousand according to the most recent federal decennial census;

C. "person" means a corporation, firm, other body corporate, partnership, association or individual, including an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity. "Person" does not include the United States of America; the state of New Mexico; any corporation, department, instrumentality or agency of the federal government or the state government; or any political subdivision of the state;

D. "proprietor" means a person who furnishes tourist accommodations to a renter;

E. "rent" means the consideration received by a proprietor in money, credits, property or other consideration valued in money from renters for tourist accommodations, other than:

(1) consideration received from a renter who has been a permanent resident of the tourist accommodation for a period of at least thirty consecutive days or a renter who enters into or has entered into a written agreement for rental of the tourist accommodation for a period of at least thirty consecutive days;

1 or

2 (2) consideration received from a renter for a room or other
3 unit of accommodation for which the renter has paid less than two dollars (\$2.00) per
4 day;

5 F. "renter" means a person to whom tourist accommodations are
6 furnished;

7 G. "room" means a room or other unit of accommodation furnished by
8 a proprietor to a renter in a tourist accommodation; and

9 H. "tourist accommodation" means a hotel, apartment, apartment hotel,
10 apartment house, lodge, lodginghouse, rooming house, motor hotel, guest house,
11 guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto
12 camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises
13 used for accommodation. "Tourist accommodation" does not include:

14 (1) accommodations at religious, charitable, educational or
15 philanthropic institutions, including summer camps operated by such institutions;

16 (2) clinics, hospitals or other medical facilities;

17 (3) privately owned and operated convalescent homes or
18 homes for the aged, infirm, indigent or chronically ill; or

19 (4) accommodations that do not have at least three rooms or
20 other units of accommodation.

21 Section 3. HOSPITALITY FEE AUTHORIZED--RATE--PURPOSE.--

22 A. A municipality may impose by ordinance a hospitality fee on the
23 gross rent received by proprietors of tourist accommodations within the municipality in
24 an amount not to exceed one percent of the gross rent. The fee imposed by this
25 subsection may be referred to as the "hospitality fee".

B. Proceeds from the hospitality fee shall be used as follows:

(1) fifty percent of the proceeds shall be used to equip and
furnish a municipal convention center; and

(2) fifty percent of the proceeds shall be used by the

1 municipality to contract to purchase advertising that publicizes and promotes tourist-
2 related attractions, facilities and events in the municipality and the county and tourist
3 facilities or attractions within the area.

4 Section 4. COLLECTION OF HOSPITALITY FEE--AUDIT.--

5 A. Every proprietor of a tourist accommodation in a municipality
6 imposing a hospitality fee shall collect the hospitality fee on behalf of the municipality
7 and shall act as a trustee of the fee revenues. The fee shall be collected from
8 proprietors in accordance with the ordinance imposing the fee and shall be charged
9 separately from the rent fixed by the proprietor for the tourist accommodations.

10 B. The governing body of a municipality imposing a hospitality fee shall
11 select for annual random audits one or more proprietors or tourist accommodations
12 subject to the fee to verify the amount of gross rent subject to the fee and to ensure
13 that the full amount of the fee on that rent is collected. Copies of audits completed
14 shall be filed annually with the local government division of the department of finance
15 and administration.

16 Section 5. FINANCIAL REPORTING.--The governing body of a municipality
17 imposing a hospitality fee shall:

18 A. furnish to any municipal advisory board dealing with occupancy,
19 lodging or accommodation taxes or fees information on that portion of a proposed
20 budget report or audit filed or received by the governing body pursuant to either
21 Chapter 6, Article 6 NMSA 1978 or the Audit Act that relates to the expenditure of
22 hospitality fee proceeds within ten days of the filing or receipt of that proposed budget,
23 report or audit; and

24 B. report quarterly to the local government division of the department
25 of finance and administration on the expenditure of hospitality fee proceeds pursuant
to Sections 3-38-15 and 3-38-21 NMSA 1978.

Section 6. ORDINANCE REQUIREMENTS.--The ordinance imposing a
hospitality fee and, as applicable, any ordinance amending the fee, shall:

A. set out the procedures for licensing a proprietor and for suspending

1 or revoking a license or refusing to license a proprietor after the governing body of the
2 municipality has given the proprietor an opportunity for a public hearing on the
3 suspension, revocation or refusal;

4 B. state the rate of the hospitality fee; the time, place and method for
5 the payment of the fee to the municipality; the accounts and other records to be
6 maintained in connection with the fee; a procedure for making refunds and resolving
7 disputes relating to the fee; the procedure for preservation and destruction of records
8 pertaining to the fee and their inspection and investigation; audit requirements;
9 applicable civil and criminal penalties; and a procedure for liens, distraint and sales to
satisfy such liens; and

10 C. clearly state any other rights, privileges, powers, immunities and
11 other details relating to proprietor licensure, the collection of the hospitality fee and
12 the remittance of the fee proceeds to the municipality.

13 Section 7. COLLECTION OF DELINQUENCIES--CIVIL
PENALTY.--

14 A. A proprietor is liable for the payment of any amount of the
15 hospitality fee proceeds the proprietor has failed to remit to the municipality.

16 B. A municipality shall provide by ordinance for a civil penalty for
17 failure to remit the hospitality fee due in an amount equal to the greater of ten percent
18 of the amount of the hospitality fee that was not remitted to the municipality or one
hundred dollars (\$100).

19 C. The municipality may bring an action in law or equity in the district
20 court for the collection of any amount of hospitality fee due, including without limitation
21 penalties on that amount, interest on the unpaid principal amount at a rate of not
22 exceeding one percent a month, the costs of collection and reasonable attorney fees
23 incurred in connection with such an action.

24 Section 8. LIEN FOR HOSPITALITY FEE--PAYMENT --CERTIFICATE OF
LIENS.--

25 A. The hospitality fee imposed by a municipality constitutes a lien in

1 favor of that municipality upon the personal and real property of the proprietor
2 providing tourist accommodations in that municipality. The lien may be enforced as
3 provided in Sections 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be
4 determined from the date of filing.

5 B. Under process or order of court, no person shall sell the property of
6 any proprietor of a tourist accommodation without first ascertaining from the clerk or
7 treasurer of the municipality in which the tourist accommodation is located the amount
8 of any hospitality fee due the municipality. The hospitality fee due the municipality
9 shall be paid from the proceeds of the sale before payment is made to the judgment
10 creditor or to any other person with a claim on the sale proceeds.

11 C. The clerk or treasurer of the municipality shall furnish upon request to any
12 person a certificate showing the amount of all liens in the records of the municipality
13 against a proprietor of a tourist accommodation pursuant to the Hospitality Fee Act.

14 Section 9. ENFORCEMENT.--

15 A. An action to enforce the Hospitality Fee Act may be brought by:

16 (1) the attorney general or the district attorney in the county of
17 jurisdiction; or

18 (2) a proprietor of a tourist accommodation who is collecting
19 the proceeds of a hospitality fee in the county of jurisdiction.

20 B. A district court may issue a writ of mandamus or order an injunction
21 or other appropriate remedy to enforce the provisions of the Hospitality Fee Act.

22 C. The court shall award costs and reasonable attorney fees to the
23 prevailing party in a court action to enforce the provisions of the Hospitality Fee Act.

24 Section 10. PENALTIES--CRIMINAL.--

25 A. It is a violation of the municipal ordinance imposing a hospitality fee
and providing for collection and administration of the fee pursuant to the Hospitality
Fee Act for any proprietor subject to the fee to fail to pay the hospitality fee, to fail to
remit the proceeds of the fee to the municipality or to fail to account properly for a
tourist accommodation and the proceeds of the fee pertaining to the accommodation.

1 B. The governing body of the municipality shall provide by ordinance
2 that a violation of an ordinance imposing and providing for collection and enforcement
3 of the hospitality fee pursuant to the Hospitality Fee Act is a misdemeanor subject to a
4 fine of not more than five hundred dollars (\$500) or imprisonment for not more than
5 ninety days, or both.

6 Section 11. REVENUE BONDS.--

7 A. Revenue bonds may be issued at any time by a municipality to
8 defray wholly or in part the costs of equipping or furnishing a municipal convention
9 center.

10 B. The revenue bonds may be payable from and payment may be
11 secured by a pledge of and lien on the revenues derived from:

12 (1) the proceeds of the hospitality fee of the municipality after
13 the deduction of the administrative costs pertaining to the fee in an amount not to
14 exceed ten percent of the gross rent fees collected by the municipality in a fiscal year
15 and excluding from the computation of such costs the administrative costs ultimately
16 recovered from delinquent proprietors by civil action as penalties, costs of collection
17 and attorney fees, but not as interest on unpaid principal;

18 (2) any convention center facility, after provision is made for
19 the payment of the operation and maintenance expenses of the convention center;
20 and

21 (3) a combination of such net revenues from both sources in
22 Paragraphs (1) and (2) of this subsection.

23 C. The bonds shall bear interest at a rate or rates as authorized in the
24 Public Securities Act, and the first interest payment may be for any period authorized
25 in that act.

 D. Except as otherwise provided in the Hospitality Fee Act, revenue
bonds authorized in the Hospitality Fee Act shall be issued in accordance with the
provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

 Section 12. REFUNDING BONDS.--

1 A. A municipality having issued revenue bonds pursuant to the
2 Hospitality Fee Act may issue refunding bonds payable from pledged revenues therein
3 authorized for the payment of revenue bonds at the time of the refunding or at the time
4 of the issuance of the bonds being refunded as the governing body of the municipality
5 may determine, notwithstanding that the revenue sources or the pledge of such
6 revenues, or both, are thereby modified.

7 B. Refunding bonds may be issued for the purpose of refinancing,
8 paying and discharging all or any part of such outstanding bonds of any one or more
9 or all outstanding issues:

10 (1) for the acceleration, deceleration or other modification of
11 the payment of such obligations, including without limitation any capitalization of any
12 interest thereon in arrears or about to become due for any period not exceeding one
13 year from the date of the refunding bonds;

14 (2) for the purpose of reducing interest costs or effecting other
15 economies;

16 (3) for the purpose of modifying or eliminating restrictive
17 contractual limitations pertaining to the issuance of additional bonds, otherwise
18 concerning the outstanding bonds, or to any facilities relating thereto; or

19 (4) for any combination of the foregoing purposes.

20 C. The interest on any bond refunded shall not be increased to a rate
21 in excess of the rate authorized in the Public Securities Act and shall be paid as
22 authorized in that act.

23 D. Except as otherwise provided in the Hospitality Fee Act, refunding
24 bonds authorized in the Hospitality Fee Act shall be issued in accordance with the
25 provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.

Section 13. DELAYED REPEAL.--The Hospitality Fee Act is repealed effective
July 1, 2013.